IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.253 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
OJAS TAR PLAST(P) LTD. - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 23/11/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1 The following question has been referred by Income Tax Appellate Tribunal, Ahmedabad Bench 'A' under Section 256(1) of the Income Tax Act,1961 (the Act) at the instance of the Commissioner of Income Tax.

> “Whether the Appellate Tribunal is right in law and on facts in placing reliance on the decision rendered u/s.271(1)(a), which had no bearing to the present issue?”

2 Heard Mr.M.R.Bhatt, learned Senior Standing Counsel for the applicant-revenue. Though served there is no appearance on behalf of the

respondent-assessee. Mr.Bhatt has very fairly invited attention to the judgment rendered by this Court in the case of *Commissioner of Income Tax Vs. R.B.Masturlal And Sons Pvt.Ltd.* delivered on 12/08/2005 in Income Tax Reference No. 26 of 1994 to point out that the issue raised by the referred question stands concluded.

3 In light of the aforesaid statement it is not necessary to set out facts and contentions in detail.

4 The question is accordingly answered in the affirmative i.e. in favour of the assessee and against the revenue. The reference stands disposed of accordingly. There shall be no order as to costs.

Sd/- Sd/-
(D.A.Mehta,J) (H.N.Devani, J)

m.m.bhatt